

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

MICHAEL J. POGUE, #1239400

§

VS.

§

CIVIL ACTION NO. 4:07cv464

DIRECTOR, TDCJ-CID

§

## MEMORANDUM OPINION AND ORDER

Petitioner filed a Rule 60(b) motion for relief in his case following the final judgment by this court. On March 25, 2011, this court denied Petitioner's petition and dismissed his case with prejudice after determining that some of his claims were procedurally defaulted and that the remaining claims did not warrant federal habeas relief. Further, on September 28, 2012, the Fifth Circuit Court of Appeals denied his motion for certificate of appealability.

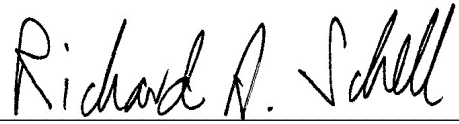
“A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60( c) (1). In his motion, Petitioner is asking the court to reconsider its final judgment dated March 25, 2011. Petitioner’s motion was filed more than seventeen months beyond the final judgment of this case. Since it was not filed within one year of final judgment, it was not filed “within a reasonable time.” *Id.*

Additionally, Petitioner does not provide the court with sufficient grounds to alter or amend the judgment. He has not shown that the failure to grant his motion for relief will result in a grave miscarriage of justice. Therefore, in the absence of any new arguments or evidence that could not

have been raised in the prior proceeding, the court denies Petitioner's motion. He has failed to timely file his motion for relief, and he has failed to state any grounds sufficient to reopen or revisit the case. Accordingly, it is

**ORDERED** that the motion for relief from judgment (docket entry #45) is **DENIED**. Any motions not previously ruled upon are **DENIED**.

**SIGNED this the 26th day of March, 2014.**

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The middle initial "A." is written in a smaller, more compact script. The last name "Schell" is written with a large, prominent "S" and a long, sweeping tail that extends to the right.

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RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE